

approximately six hundred million dollars (\$600,000,000). These figures are far more substantial than **those** raised by SBC in its Petition. **Yet**, SBC appears to have **proposed no** radical changes **in** its practice and pattern of noncompliance to **address this** financial threat.

Significantly, SBC **has** failed **to** provide any analysis regarding the effect its proposed revisions will have **on** its carrier customers and, in **turn**, their customers. **The** undeniable anticompetitive effect of SBC's tariff revisions **is that** they would permit SBC to extract hundreds of millions of dollars in scarce and irreplaceable **working** capital **from** its competitors, while upending fixed budgets and business plans **in the** process. **Indeed**, it is not unlikely that many carriers simply do not have means to devote **the** amounts of capital to the deposits or prepayments SBC **seeks**. Even if they did, **the** encumbrance of **scarce working** capital would make it difficult, if not impossible for many carriers to **meet** conditions and covenants of preexisting financial arrangements. **The** hardship that SBC's proposed **revisions** would create should not be **underestimated**.<sup>29</sup> To permit SBC to demand deposits that could easily total in the hundreds of millions of dollars would serve little other purpose **than** to allow SBC to intentionally inflict harm **on** its competitors. The Commission **cannot** allow SBC **to** intentionally inflict such harm **on** its competitors and must take all appropriate steps to **ensure** that competition continues to take hold.

---

**has made an additional three million (\$3,000,000) in payments as a result of violations of the merger conditions in January 2002 through May 2002.**

<sup>19</sup> See Remarks of Senator Fritz Hollings before the Senate Committee on Commerce, Science and Technology, July 30, 2002 (characterizing the ILECs' current campaign re security deposits as just another gimmick used to **take down** their competitors and extend their monopolies).

#### IV. CONCLUSION

For the foregoing reasons, the Commission should reject the SBC tariff revisions as unlawful or, alternatively, exercise its full authority to suspend and investigate those revisions.

Respectfully submitted,



Robert J. Aamoth

John J. Heitmann

E M W. Emmott

**KELLEY DRYE & WARREN U P**

**1200 19<sup>th</sup> Street, NW, Suite 500**

**Washington, DC 20036**

**(202) 955-9600**

*Counsel for Association for Local  
Telecommunication Services, the Competitive  
Telecommunication.? Association, Grande  
Communications Networks, Inc., Ionex  
Telecommunications, Inc., KMC Telecom Holdings.  
Inc., NuVox, Inc., Sage Telecom, Inc., Talk America  
Inc., and XO Communications, Inc.*

Dated this 9<sup>th</sup> day of August, 2002.

**CERTIFICATE OF SERVICE**

I, Erin W. Emmott, hereby certify that, on *this 9th day of August 2002*, a copy of the foregoing *Petition To **Reject Or, Alternatively, To Suspend And Investigate*** was sent, as indicated, to the following individuals:

Marlene H. Dortch, Secretary <b>(Electronically)</b> <del>Federal</del> Communications Commission 445 12 <sup>th</sup> Street, SW Washington, DC 20554
Jeffrey Carlisle, <del>Senior Deputy</del> Chief <b>(Electronically)</b> <del>Wireline</del> Competition Bureau <del>Federal</del> Communications Commission 445 12 <sup>th</sup> Street, <del>SW</del> <del>Washington</del> , DC 20554
Tamara Preiss, Chief <b>(Electronically)</b> Pricing Policy Division <del>Wireline</del> Competition Bureau <del>Federal</del> Communications Commission 445 12 <sup>th</sup> Street, <del>SW</del> Washington, DC 20554
Vienna Jordan <del>(Electronically)</del> <del>Wireline</del> Competition Bureau <del>Federal</del> Communications Commission 445 12 <sup>th</sup> Street, <del>SW</del> Washington, DC 20554
Judith A. Nitsche <b>(Electronically)</b> <del>Wireline</del> Competition Bureau <del>Federal</del> Communications Commission 445 12 <sup>th</sup> Street, <del>SW</del> Washington, DC 20554
Julie Saulnier <del>(Electronically)</del> <del>Wireline</del> Competition Bureau <del>Federal</del> Communications Commission 445 12 <sup>th</sup> Street, SW Washington, DC 20554

**William Maher, Bureau Chief (Electronically)**  
**Wireline Competition Bureau**  
**Federal Communications Commission**  
**445 12<sup>th</sup> Street, SW**  
**Washington, DC 20554**

**A. Alex Vega (Facsimile/First Class Mail)**  
**Area Manager – Tariff Administration**  
**SBC**  
**Four Bell Plaza**  
**Room 1970.04**  
**Dallas, TX 75202**  
**(214) 858-0639**

**Qualex International (Electronically)**  
**Federal Communications Commission**  
**445 12<sup>th</sup> Street, S.W., Room CY-B402**  
**Washington, D.C. 20554**



E M W. Emmott



## **EXHIBIT B**

**KELLEY DRYE 6 WARREN LLP**

LIMITED LIABILITY PARTNERSHIP

1200 19<sup>TH</sup> STREET, N.W.

SUITE 500

WASHINGTON, D.C. 20036

(202) 955-9800

FACSIMILE

(202) 955-9782

www.kelleydrye.com

DIRECT LINE: (202) 955-9889

EMAIL: jheltmann@kelleydrye.com

NEW YORK, NY  
TYSONS CORNER, VA  
LOS ANGELES, CA  
CHICAGO, IL  
STAMFORD, CT  
PARLIPPANY, NJ

BRUSSELS, BELGIUM  
HONG KONG

AFFILIATE OFFICES  
BANGKOK, THAILAND  
JAKARTA, INDONESIA  
MANILA, THE PHILIPPINES  
MUMBAI, INDIA  
TOKYO, JAPAN

August 23, 2002

**VIA E-MAIL**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Room  
Washington, D.C. 20554

**Re: Verizon Telephone Companies Petition for a Emergency Declaratory and Other Relief, WC Docket No. 02-202; BellSouth Telecommunication, Inc., Tariff F.C.C. No. 1, Transmittal Nos. 657 and 635; Verizon Telephone Companies, Tariff F.C.C. Nos. 1, 11, 14 and 16, Transmittal No. 226; Southwestern Bell Telephone Company to Tariff F.C.C. No. 73, Transmittal No. 2906; Ameritech Operating Companies to Tariff F.C.C. No. 2, Transmittal No. 1312; Nevada Bell Telephone Company to Tariff F.C.C. No. 1, Transmittal No. 20; Pacific Bell Telephone Company to Tariff F.C.C. No. 1, Transmittal No. 77; Southern New England Telephone Companies to Tariff F.C.C. No. 39, Transmittal No. 77**

***Ex Parte***

Dear Ms. Dortch:

The attached written *ex parte* was submitted today, August 23, 2002, via electronic mail, to William Maher, Bureau Chief, Wireline Competition Bureau, and Tamara L. Preiss, Division Chief, Pricing Policy Division, Wireline Competition Bureau, with copies sent electronically to Scott Bergmann, Vienna Jordan, Judith Nitsche and Julie Saulnier.

KELLEY DRYE & WARREN LLP

Marlene H. Dortch, Secretary  
August 23, 2002  
Page Two

In accordance with Section 1.1206 of the Commission's rules, an original and one copy of this letter is being filed with your office. If you have any questions concerning this filing, please do not hesitate to contact me.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John I. Heitmann", written in a cursive style.

John I. Heitmann

JJH/cpa



**KELLEY DRYE 6 WARREN LLP**

LIMITED LIABILITY PARTNERSHIP

**1200 19TH STREET, N.W.**

**SUITE 500**

**WASHINGTON, D.C. 20036**

**(202) 955-9600**

**FACSIMILE**

**(202) 955-9792**

**www.kelleydrye.com**

**DIRECT LINE: (202) 955-9789**

**EMAIL: eemott@kelleydrye.com**

**NEW YORK, NY  
TYSONS CORNER, VA**

**LOS ANGELES, CA**

**CHICAGO, IL**

**STAMFORD, CT**

**PARSIPPANY, NJ**

**BRUSSELS, BELGIUM**

**HONG KONG**

**AFFILIATE OFFICES  
BANGKOK, THAILAND  
JAKARTA, INDONESIA  
MANILA, THE PHILIPPINES  
MUMBAI, INDIA  
TOKYO, JAPAN**

**August 23, 2002**

**VIA E-MAIL**

**Mr. William Maher  
Bureau Chief Wireline Competition Bureau  
Federal Communications Commission  
445 12th St., SW  
Washington, DC 20554**

**Ms. Tamara L. Preiss  
Division Chief, Pricing Policy Division, Wireline Competition Bureau  
Federal Communications Commission  
445 12th St., SW  
Washington, DC 20554**

**Re: Verizon Telephone Companies Petition for Emergency Declaratory and  
Other Relief, WC Docket No. 02-202; BellSouth Telecommunication, Inc.,  
Tariff F.C.C. No. 1, Transmittal Nos. 657 and 635; Verizon Telephone  
Companies, Tariff F.C.C. Nos. 1, 11, 14, and 16, Transmittal No. 226;  
Southwestern Bell Telephone Company to Tariff F.C.C. No. 73, Transmittal  
No. 2906; Ameritech Operating Companies to Tariff F.C.C. No. 2,  
Transmittal No. 1312; Nevada Bell Telephone Company to Tariff F.C.C. No.  
1, Transmittal No. 20; Pacific Bell Telephone Company to Tariff F.C.C. No.  
1, Transmittal No. 77; Southern New England Telephone Companies to  
Tariff F.C.C. No. 39, Transmittal No. 77**

***Ex Parte***

**Dear Mr. Maher and Ms. Preiss :**

**Broadview Networks, Inc., Grande Communications Networks, Inc., Ionex  
Telecommunications, Inc., ITC^DeltaCom Communications, Inc., KMC Telecom Holdings, Inc.,  
NewSouth Communications Corp., NuVox, Inc., NuVox Communications, Inc., Sage Telecom,**

KELLEY DRYE & WARREN LLP

Mr. William Maher, Bureau Chief, Wireline Competition Bureau  
Ms. Tamara L. Preiss, Division Chief, Pricing Policy Division  
August 23, 2002  
Page Two

Inc., Talk America, Inc., and XO Communications, Inc., (collectively, "CLBC Coalition"), by their undersigned counsel, respectfully submit this written *ex parte* in WC Docket No. 02-202, which was opened to address Verizon's "Petition for Emergency Declaratory and Other Relief".

In its self-styled Emergency Petition, Verizon urges the Commission to (1) expeditiously approve tariff revisions it had not yet filed, (2) "unequivocally support" positions taken by Verizon in various bankruptcy proceedings, and (3) assist Verizon in upending bankruptcy law by using the threat of end user service disruption to force cures where no legal obligation to cure exists. To fill out the picture, there also is the recent decision from the court in the WorldCom bankruptcy proceeding which denied Verizon's requests for prepayments and deposits and Verizon's own subsequent public admission that the "adequate assurance" provided by the court was indeed likely to be sufficient. If ever there was a case of "the boy who cried wolf", this is it. Verizon, BellSouth and SBC face no emergency. Rather, what they face is an opportunity to create more financial turmoil and end user service disruption by stripping their remaining competitors of working capital and raising their costs. This Commission should neither serve as nor provide the tool that enables the Bells to do this.

The purpose of this *ex parte* predominantly is to ensure that four Petitions to Suspend, or in the Alternative, Reject tariff revisions regarding security deposits, advanced payments and notice prior to disconnect or refusal to serve are incorporated into the record of WC Docket No. 02-202. It is our understanding that, although the issues raised by Verizon in its Emergency Petition previously had been raised elsewhere, the Commission may make policy decisions which affect other dockets and the suspended tariff revisions, in particular, in the context of the Verizon Emergency proceeding.<sup>2</sup> Accordingly, we respectfully request that the following petitions ("Petitions") be incorporated by reference into this docket: (1) Petition to Reject or Alternatively, Suspend and Investigate, In the Matter of Revisions by BellSouth Telecommunication, Inc., to Tariff F.C.C. No. 1, Transmittal No. 657, filed on July 26, 2002, (2) Petition to Reject or Alternatively, Suspend and Investigate, In the Matter of Revisions by BellSouth Telecommunication, Inc., to Tariff P.C.C. No. 1, Transmittal No. 635, filed on May 20, 2002; (3) Petition to Reject or Alternatively, Suspend and Investigate, In the Matter of Revisions by Verizon Telephone Companies, to Tariff F.C.C. Nos. 1, 11, 14, and 16, Transmittal No. 226 filed on August 2, 2002; and (4) Petition to Reject or Alternatively, Suspend and Investigate, In the Matter of Revisions by Southwestern Bell Telephone Company to Tariff F.C.C. No. 73, Transmittal No. 2906; Revisions by Ameritech Operating Companies to Tariff F.C.C. No. 2, Transmittal No. 1312; Revisions by Nevada Bell Telephone Company to Tariff

<sup>1</sup> Public Notice, DA 02-1859, WC Docket No. 02-202 (July 31, 2002).

<sup>2</sup> The CLBC Coalition recognizes the utility of addressing common issues in a single docket, but respectfully submits that inadequate notice has been given to make WC Docket No. 02-202 that docket. To protect itself from future litigation and avoid regulatory uncertainty, the Commission should seriously consider whether the vehicle selected (ironically, created by the company most likely to challenge it) is appropriate.

Mr. William Maher, Bureau Chief, Wireline Competition Bureau  
Ms. Tamara L. Preiss, Division Chief, Pricing Policy Division  
August 23, 2002  
Page Three

F.C.C. No. 1, Transmittal No. 20; Revisions by Pacific Bell Telephone Company to Tariff F.C.C. No. 1, Transmittal No. 77; Revisions by Southern New England Telephone Companies to Tariff F.C.C. No. 39, Transmittal No. 77 filed on August 9, 2002, be incorporated into the record for WC Docket No. 02-202.

In these Petitions, CLEC Coalition members argued that the proposed tariff revisions were anticompetitive and would create additional financial instability in the industry by shifting massive amounts of capital (unbudgeted and often not available) from competitors to incumbents. Shortened notice provisions proposed by Verizon and SBC also could create end user service disruptions and force competitors into violations of Commission and state disconnect rules – all of this with the ILEC being the sole arbiter of what is due and what must be cured. None of these proposals, however, have been justified in terms of the need for them or the costs that would be imposed by them on competitors, competition, and end users. These ILECs continue to enjoy stunning success in avoiding bad debt (although apparently less stunning than a year or two ago) for the highly profitable services sold under the tariffs at issue. When bad debt goes from less than one percent to greater than one percent on billions of dollars of revenue, what we have is not an emergency but rather a slightly less spectacular collection rate. Moreover, the ILECs have provided no evidence that they have used the tools already available to them to stem this recent erosion. Indeed, the record suggests that their billing systems and processes are so inadequate that they are certainly a key contributor to the ILECs' alleged problems.

Mirroring the absence of proof that existing tools have not provided the Bells with sufficient protection in pre-petition bankruptcy situations, is an absence of proof that the Bells have not managed to get adequate assurance once a carrier customer has filed for bankruptcy. For example, the United States Bankruptcy Court for the Southern District of New York in the *WorldCom Chapter 11 bankruptcy proceeding*, in an August 14, 2002 order,<sup>3</sup> determined that services provided by Utility Companies would be treated as "actual and necessary expenses" and granted Utility Companies an administrative expense priority claim, which constitutes a junior superpriority administrative claim, for "any and all unpaid charges for postpetition services provided by Utility Companies" to WorldCom. The bankruptcy court ordered that these claims are "pari passu" or equal among Utility Companies, junior only to two classes of creditors, DIP Lenders and intercompany junior liens and claims.<sup>4</sup> The court further found that payments on the post-petition utility services rendered are to be made on "a timely basis, in accordance with applicable contracts and tariffs."<sup>5</sup> In addition to granting Utility Companies special status for

<sup>3</sup> *In re WorldCom, Inc., et al*, Order Pursuant to Sections 105(a) and 366(b) of the Bankruptcy Code Authorizing WorldCom to Provide Adequate Assurance to Utility Companies, Case No. 02-13533 (AJG) (rel. Aug. 14, 2002) ("Order").

<sup>4</sup> *Id.*, at 2.

<sup>5</sup> *Id.* 113.

Mr. William Maher, Bureau Chief, Wireline Competition Bureau

Ms. Tamara L. Preiss, Division Chief, Pricing Policy Division

August 23, 2002

Page Four

post-petition utility services rendered, the bankruptcy court further provided Utility Companies with the ability, in cases of payment default, to seek an order requiring immediate payment, or other appropriate relief or action available under any applicable tariff or regulation. For disputed amounts, the bankruptcy court required the establishment of expedited dispute resolution procedures for handling those amounts in post-petition invoices.<sup>6</sup> Finally, in addition to these safeguards, the bankruptcy court ordered WorldCom to provide weekly financial reports to Utility Companies.<sup>7</sup>

Notably, the bankruptcy court did not find that prepayments and deposits were necessary to provide "adequate assurance" for payment of amounts owed for services rendered. In a statement released after the issuance of the Order, Verizon publicly acknowledged that "[i]t is likely that the protections instituted by the court will be sufficient to protect Verizon's interests as long as WorldCom's financial position does not materially worsen."<sup>8</sup> If Verizon can tell the world that it does not need prepayments and deposits in this context, it certainly does not need new and additional means of imposing such requirements on its competitors in others. Accordingly, the Commission should reject the ILECs' tariff revisions regarding deposits, advanced payments and shortened notice intervals.

The Commission must also reject requests by Verizon and other ILECs to have the Commission aid and abet their efforts to use bankruptcy as a means of extorting payments by threatening end user disconnects, regaining lost customers, and stranding assets that have been and could continue to be used by facilities-based competitors.<sup>9</sup> As providers of services for which there are no alternatives, ILECs retain substantial leverage over carriers in the bankruptcy process, as well as those who seek to bring carriers or their assets out of bankruptcy. It is neither appropriate nor necessary for the Commission to "unequivocally support" Verizon's and other ILECs' efforts to secure deposits and prepayments in bankruptcy court proceedings, as Verizon requests. The issues of payment to creditors on pre-petition debt and of "adequate assurance" on post-petition debt are governed by the bankruptcy code and are best left to the bankruptcy courts which obviously have expertise in these matters. To the extent the Commission determines that it is in the public interest to weigh-in on such matters in various bankruptcy proceedings, it must consider the totality of the circumstances, as well as the potential short-term and long-term

<sup>6</sup> *Id.*, at 3.

<sup>7</sup> The Order further required WorldCom to "comply with all applicable regulatory requirements, including but not limited to, timely service of notices to customers consistent with 47 U.S.C. § 214" to the extent termination of service becomes necessary. *Id.*, at 5.

<sup>8</sup> See "Judge Compromises on LEC's Request for Tougher WorldCom Payment Plan," *TR Daily*, August 15, 2002.

<sup>9</sup> In this regard, the Comments of the Mid-Size Carrier Group are most egregious. The Commission should flatly reject that group's proposals to ensure the "seamless transition" of wayward customers back to their monopoly providers.

KELLEY DRYE & WARREN LLP

Mr. William Maher, Bureau Chief, Wireline Competition Bureau  
Ms. Tamara L. Preiss, Division chief, Pricing Policy Division  
August 23, 2002  
Page Five

impacts of the positions it advocates – it simply cannot commit to support Verizon and other ILECs blindly based on the false notion that healthy monopolies are good for the economy in general and end users in particular.

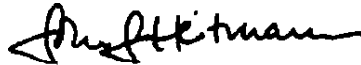
Finally, the Commission also must reject the efforts of Verizon and other ILECs to use the threat of end user disconnects as a means of extorting “cures” where the bankruptcy code creates no such obligation. Indeed, the Commission should affirmatively reject the “assume the agreement and all debts or face end user service disruption” ultimatums issued by Verizon and other ILECs. Such ultimatums cannot be squared with either the bankruptcy code or the Communications Act, as they effectively foreclose any ability to reject contracts (a carrier rejecting contracts would face service disruptions on day one, as well as disconnect and reconnect fees, and unknown liabilities with respect to any end user service outage that occurs) and make it more costly for assets to be purchased from a bankrupt estate and more likely that those assets will be wasted and that customers simply will be forced to return to their former monopoly provider.

KELLEY DRYE & WARREN LLP

Mr. William Maher, Bureau Chief, Wireline Competition Bureau  
Ms. Tamara L. Preiss, Division Chief, Pricing Policy Division  
August 23, 2002  
Page six

For all of the foregoing reasons, and those set forth in the Petitions, the Commission should (1) reject the ILECs' tariff revisions incorporating additional means to impose deposit and prepayment requirements, and shortening refusal of service/disconnect notice intervals, and (2) deny all other relief sought by Verizon in its Emergency Petition.

Respectfully submitted,



Robert J. Amoth  
John J. Heitmann  
Erin W. Emmott  
**KELLEY DRYE & WARREN LLP**  
1200 19<sup>th</sup> Street, NW, Suite 500  
Washington, DC 20036  
(202) 955-9600  
(202) 955-9792 (facsimile)

*Counsel for Broadview Networks, Inc., Grande  
Communications Networks, Inc., Ionex  
Telecommunications, Inc., ITC^DeltaCom  
Communications, Inc., KMC Telecom Holdings,  
Inc., NewSouth Communications Corp., NuVox,  
Inc., NuVox Communications, Inc., Sage  
Telecom, Inc., Talk America, Inc., and XO  
Communications, Inc.*

cc: Scott Bergmann  
Vienna Jordan  
Judith Nitsche  
Julie Saulnier



## **EXHIBIT C**



Before the  
Federal Communications Commission  
Washington, D.C. 20054

In the Matter of	)	
	)	
The Verizon Telephone Companies	)	WC Docket No. 02-317
Tariff FCC Nos. 1, 11, 14 and 16	)	
Transmittal No. 226	)	

OPPOSITION TO DIRECT CASE

**ALLEGIANCE TELECOM, INC.,  
BROADVIEW NETWORKS, INC.,  
CABLE & WIRELESS,  
KMC TELECOM HOLDINGS CORP.,  
TALKAMERICA INC.,  
XO COMMUNICATIONS.INC.**

**Robert J. Aamoth  
John J. Heitmann  
E M W. Emmott  
KELLEY DRYE & WARREN LLP  
1200 19<sup>th</sup> Street, NW, Suite 500  
Washington, DC 20036  
(202) 955-9600**

*Their Anomeys*

**Date: November 12,2002**

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Before the  
Federal Communications Commission  
Washington, D.C. 20054

In the Matter of )  
 )  
The Verizon Telephone Companies ) WC Docket No. 02-317  
Tariff FCC Nos. 1, 11, 14 and 16 )  
Transmittal No. 226 )

OPPOSITION TO DIRECT CASE

Allegiance Telecom, Inc., ~~Broadview Networks, Inc.~~, Cable & Wireless, KMC Telecom Holdings, Inc., Talk America Inc., and XO Communications, Inc. (hereinafter the "Joint Commenters"), by **their attorneys**, hereby oppose the **Direct Case** of the Verizon Telephone Companies ("Verizon") submitted to the Commission on October 29, 2002 ("**Direct Case**"), pursuant to the Commission's Order released **October 7, 2002,**<sup>1</sup> in connection with **Verizon's Transmittal No. 226.**<sup>2</sup> The Joint **Commenters** respectfully request that the Commission deny **Verizon's** request to **modify** its Tariff FCC Nos. 1, 11, 14 and 16 **as proposed in** Transmittal No. 226.

**As a matter** of administrative economy, the Joint **Commenters** request that the Commission incorporate **into** the record the **Petition to Reject** or, Alternatively, to Suspend and Investigate, **filed** with the Commission on August 1, 2002, attached hereto as **Exhibit A.**<sup>3</sup> In addition, the Joint **Commenters** request that the **ex parte** comments

<sup>1</sup> *The Verizon Telephone Companies, Tariff FCC Nos. 1, 11, 14 and 16, Transmittal No. 226. Order, WC Docket No. 02-317, DA 02-2522 (rel. Oct. 7, 2002) ("Designation Order").*

<sup>2</sup> *On August 22, 2002, the Commission suspended Verizon's proposed tariff revisions for a five (5) month investigation period. Verizon Telephone Companies, Tariff FCC Nos. 1, 11, 14 and 16 Transmittal No. 226., Order, DA 02-2055, rel Aug. 22, 2002 ("Verizon Suspension Order").*

<sup>3</sup> *Petition to Reject or, Alternatively, to Suspend and Investigate of ALTS, Broadview Networks, Inc., CompTel, KMC Telecom Holdings, Inc., Talk America Inc., and XO Communication.. Inc. (filed Aug. 1, 2002) ("August 1, 2002 Petition to Reject").*

filed in WC Docket No. 02-202,<sup>4</sup> which was opened to address Verizon's "Petition for Emergency Declaratory and Other Relief," also be incorporated into this docket. Those comments are attached **as Exhibit B**. Finally, the Joint Commenters request that the "Opposition to Direct **Case**" filed with the Commission on October **24, 2002**<sup>6</sup> in response to the Direct Case filed by **BellSouth Telecommunications, Inc.**<sup>7</sup> regarding BellSouth's tariff revisions filed under Transmittal No. 657, attached hereto as **Exhibit C**, be incorporated into the record of the aboves captioned docket.

Verizon's tariff filing must be rejected because it imposes enormous and anticompetitive burdens on the competitive telecommunications industry to address a "problem" which Verizon's own numbers **show** does not **exist**. Verizon claims that its total interstate uncollectibles from carriers in **2001** was a mere **\$39 million**,<sup>8</sup> and this amount, by Verizon's own admission, includes uncollectibles for unbundled network elements ("UNEs") and other services, not just interstate exchange access services under

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**Letter to Marlene H. Dortch, ex parte** written comments of Broadview Networks, Inc., Grande Communications Networks, Inc., Ionex Telecommunications, Inc., ITC^DeltaCom Communications, Inc., KMC Telecom Holdings, Inc., NewSouth Communications Corp., NuVox, Inc., NuVox Communications, Inc., Sage Telecom Inc., Talk **America, Inc., and XO** Communications, Inc., filed in WC Docket No. 02-202 on August 23, 2002 ("**August 23, 2002 Ex Parte**").

<sup>5</sup> **Verizon Telephone Companies Petition for Emergency Declaratory and Other Relief**, Public Notice, DA 02-1859, WC Docket No. 02-202 (July 31, 2002).

Opposition to Direct Care of Allegiance Telecom, Inc., Cable & Wireless, ITC^DeltaCom Communications, Inc., **KMC** Telecom Holdings, Inc., NewSouth Communications Corp., NuVox Communications, Inc., Talk America Inc., and XO Communications, Inc. (filed Oct. **24, 2002**) ("**BellSouth Opposition**").

**BellSouth Telecommunications, Inc. Tariff FCC Na 1, Transmittal No. 657**, WC Docket No. 02-304, Direct Case (filed Oct. 10, **2002**).

<sup>8</sup> **See Direct Case** at 13-14 (Specifically, in 2001, Verizon claimed that its total uncollectibles for 2001 were \$110.3 million for Verizon-East and \$18.96 million for Verizon-West, while carrier uncollectibles had grown to roughly 30% of the total uncollectibles for the company or approximately \$33 million for Verizon-East and approximately \$5.7 million for Verizon-West).

the tariffs it here ~~seeks~~ to revise.<sup>9</sup> At the same time, Verizon *earned* more than **\$4.3 billion** on interstate Special Access services in 2001, and it achieved *a nearly 22% rate of return* for those services in 2001.<sup>10</sup> Verizon's 2001 interstate exchange access earnings increase significantly when interstate Switched Access services are taken into account." Simply put, Verizon's *tariff* filing does not pass the "laugh" test – it has failed abysmally to **show** that it faces any significant problem with uncollectibles under its interstate exchange access tariffs, ~~or~~ that its current deposit provisions do not provide adequate protection against unreasonable exposure to bad debt losses.

**I. IN \_\_\_\_\_ S \_\_\_\_\_ Y**

1. Through its proposed tariff revisions, Verizon is ~~seeking~~ to **expand** dramatically the scope of its security deposit requirements as well as its ability to refuse or **discontinue service** to competing carriers. On August 22, 2002, the Commission **suspended** the proposed tariff revisions for a period of five months and **commenced** this investigation into Verizon's proposed tariff revisions.

2. Among ~~other things~~, the proposed ~~revisions~~ would permit Verizon to impose security deposit requirements on existing interstate access customers **who** have a history of timely paying their access bills based solely on overbroad and arbitrary

<sup>9</sup> *Direct Case* at A-I I (acknowledging that it does not account for uncollectibles by service type).

<sup>10</sup> See Declaration of Stephen Friedlander, *In the Matter of AT&T Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, RM No. 10593, Petition of AT&T (filed Oct. 15, 2002) (Friedlander Declaration, AT&T Petition), ¶¶ 3-7 (citing to the 1996-2001 ARMIS 4301, Table I, Costs and Revenue Table, Special Access, Column (s), Average New Investment, Row 1910 and Net Return, Row 1915).

<sup>11</sup> Verizon earned approximately \$2.3 billion in Switched Access Revenues for the year 2001. See ARMIS data 43-04: Table 1, Separations and Access Table, (totaling the Network Access Service Revenue for Switched Access for all Verizon entities for 2001) available at [http://gullfoss2.fcc.gov/cgi-bin/websql/prod/cc\\_/forms/output.htm](http://gullfoss2.fcc.gov/cgi-bin/websql/prod/cc_/forms/output.htm).

standards established and administered by Verizon. **As** the Commission properly noted in its *Designation Order*, “[t]he proposed revisions to the security deposit terms significantly alter the balance between Verizon and its intrastate access customers with respect to the risks of nonpayment of interstate access bills” that has remained in place for roughly the last 20 years.<sup>12</sup>

3. If permitted to be implemented, these tariff revisions would result in the shifting of many tens of millions of dollars of scarce working capital from Verizon’s carrier customers to their direct competitor, Verizon. Verizon does not dispute that the amounts it could collect from its access customers under these tariff revisions would exceed, probably by many tens of millions of dollars, the loss from uncollectibles that Verizon experienced under these tariffs in 2001.

4. Furthermore, the proposed tariff revisions would give Verizon virtually unfettered discretion to refuse to provide service, or to discontinue service, with almost no advance notice to its Carrier-customers and virtually no time for its carrier-customers to resolve payment issues, find alternative suppliers (in the limited situations where any exist), or notify end-user customers.

5. Verizon claims that these changes are necessary to “ensure that healthy carriers are not unfairly burdened by the plight of financially distressed carriers” and to protect it “during the industry downturn” that has resulted in the bankruptcy of WorldCom and other carriers. However, Verizon has not demonstrated that its current

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<sup>12</sup> *Designation Order* ¶ 11

<sup>13</sup> *Direct Case* at 1

<sup>14</sup> *Id.* at 2.

tariff provisions provide it with insufficient protection, or even that it has **fully** utilized the current tariff provisions to minimize its exposure **to** bad debt losses. Nowhere does Verizon offer any concrete **data** showing that the current provisions – which permit Verizon **to** impose **security** deposits on existing customers who do not have **a** timely payment history – do not provide adequate protection against significant **losses** in most cases. With its proposed **tariff** revisions, Verizon is **seeking** to use the **frenzy** surrounding the WorldCom bankruptcy proceeding, which **may** largely be attributable to **fraud** and hence is **not** characteristic of the industry **as** a whole, **as** a pretext for insulating itself from all business **risk** and for shifting **that risk** squarely onto its direct competitors **at a time** when **many** of them simply **cannot bear** the **burden**.

6. The capital **transfer** contemplated by Verizon's proposed tariff revisions (which **surely will total in the many** tens of millions of dollars) is **simply** not **accounted** for in the **business** plans **of its** remaining local competitors, **and the extent** to which such a capital shift could be supported by individual carriers at **any** point in the near **future** is highly doubtful. There simply is no compelling policy **reason** why the Commission should allow Verizon to use its FCC tariffs **as** a weapon **to drain** scarce capital **from** its competitors while insulating itself **from** virtually any business **risk** resulting **from** the sale **of enormously** profitable interstate access services.

7. **Verizon's Direct Case** is, in large part, unresponsive **to** the issues **set** out for investigation by the Commission in its *Designation* Order. The Joint Commenters question whether Verizon has **justified** treating its data **as** "proprietary" given that both

BellSouth and SBC<sup>15</sup> filed Direct Cases in similar circumstances without relying upon any proprietary data. In particular, the Joint Commenters dispute Verizon's allegation that its response embodies "sensitive information concerning Verizon's billing and collection practices, which is kept confidential within the company and is not normally released due to concerns that it could harm Verizon's competitive position."<sup>16</sup>

8. Verizon has provided no substantial justification for the material changes it asks the Commission to approve. General references to market instability and the bankruptcy of one carrier cannot suffice to justify adopting a tariff provision that would require nearly every access customer to pay burdensome security deposits to its principal rival. In particular, the Joint Commenters demonstrate below that (1) Verizon has filed to provide a legitimate basis for expanding the scope of its ability to demand a security deposit from existing interstate access customers in order to shift the normal business risks associated with the sale of its highly profitable access services onto its direct competitors;" (2) Verizon has failed to demonstrate the reasonableness of reducing the notice requirement from thirty days to seven days before service may be terminated. or

<sup>15</sup> *Ameritech Operating Companies, Tariff FCC No. 2, Transmittal No. 1312; Nevada Bell Telephone Companies Tariff FCC No. 1, Transmittal No. 20; Pacific Bell Telephone Company, FCC Tariff No. 1, Transmittal No. 77; Southern New England Telephone Companies, Tariff FCC No. 39, Transmittal No. 772; Southwestern Bell Telephone Company, FCC Tariff No. 73, Transmittal No. 2906. DA No. 02-2577, WC Docket No. 02-319; Direct Case (filed October 31, 2002).*

<sup>16</sup> *Letter to Marlene H. Dortch from Ann H. Rakestraw, requesting confidential treatment of the data marked "proprietary" in the Direct Case of Verizon and a protective order, dated Oct. 29, 2002 ("Protective Order Request").*

<sup>17</sup> To the extent risk associated with the WorldCom bankruptcy could be characterized as extraordinary, it is inappropriate for Verizon's competitors to bear the burden, as they did not share in the massive profits Verizon has reaped and continues to reap from WorldCom nor are they receiving the type of post-petition payments that Verizon is receiving from WorldCom on an ongoing basis. See "WorldCom Extends Verizon Billing Pact," *TR Daily*, Sept. 4, 2002, ("WorldCom will pay to Verizon \$34.5 million that it owed the company prior to entering bankruptcy proceedings in July?").



reducing the notice period to ten days for a security deposit; (3) Verizon has failed to justify the reasonableness of its security deposit refund provision; and (4) Verizon has not shown that the proposed tariff changes are not material changes to Verizon's term contracts, or that such revisions satisfy the substantial cause test.

9. As stated in the *August 1, 2002 Petition to Reject*, and reiterated in both the *August 23, 2002 Ex Parte* and the *BellSouth Opposition*, permitting these revisions to take effect as filed by Verizon will cause significant and irreparable harm to its remaining direct competitors. As noted by Kim N. Wallace, Managing Director, Lehman Bros., Inc., at Chairman Powell's recent *en banc* hearing, "[t]he danger of attempting to adapt microeconomic policy to current conditions is that such policies always lag real-world events and invite high risks of unintended consequences."<sup>18</sup>

## II. ISSUES DESIGNATED FOR INVESTIGATION

### A. Basis for Requiring Deposit or Advance Payments from a Customer

10. As raised by the Joint Commenters in the *August 1, 2002 Petition to Reject*,<sup>19</sup> and acknowledged by the Commission in the *Designation Order*,<sup>20</sup> the proposed tariff revisions will enable Verizon to stifle local competition by requiring cash-strapped competitors to pay Verizon many tens of millions of dollars in scarce (if not irreplaceable) working capital. The payments Verizon will be able to extract from its competitors will far exceed any bad debt losses that Verizon has actually experienced

<sup>18</sup> *Telecommunications Reports*, Vol. 68, No. 38, Oct. 15, 2002.

<sup>19</sup> See e.g., *August 1, 2002 Petition to Reject* at 3, 5 (demonstrating that Verizon's proposed tariff revisions are nothing more than an anticompetitive attempt by Verizon to impose new and arduous requirements on its direct competitors).

<sup>20</sup> *Designation Order* ¶ 11.